TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1931

No. 178

WILLIAM J. STRATTON, AS SECRETARY OF STATE OF THE STATE OF ILLINOIS, APPELLANT,

vs.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS

FILED JUNE 23, 1931

(35,992)

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IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS, SOUTHERN DIVISION

In Equity. No. 800

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

vs.

WILLIAM J. STRATTON, Secretary of State of the State of Illinois

CAPTION

Be it remembered that heretofore to wit: on the 21st day of July, in the year of our Lord one thousand nine hundred and twenty-seven, that being one of the days of the June Term, A. D. 1927, of the district court of the United States for the Southern Division of the Southern District of Illinois, there was filed in the office of the clerk of said court, a certain original bill of complaint against Louis L. Emmerson, Secretary of State of the State of Illinois (which said bill of complaint is not incorporated herein) and be it further remembered that afterwards, on to wit: the 11th day of February, in the year of our Lord one thousand nine hundred and thirty-one, that being one of the days of the January Term, A. D. 1931, of the district court of the United States for the Southern Division of the Southern District of Illinois, there was filed therein, a certain Stipulation for substitution of party defendant, upon which Stipulation an appropriate order was duly entered, which said Stipulation and Order thereon as well as the Amended Bill filed in pursuance thereof are in the words and figures, following, to wit:

[fol. 3] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION RE SUBSTITUTION—Filed Feb. 11, 1931

It is stipulated by and between the above entitled parties, by their respective Solicitors, that William J. Stratton is

now the duly qualified and acting Secretary of State of the State of Illinois, succeeding Louis L. Emmerson, the above named defendant, and that said William J. Stratton, Secretary of State of the State of Illinois may be substituted as a party defendant for and in place of said Louis L. Emmerson.

Dated this 7th day of February, A. D. 1931.

Josiah Whitnel, Solicitors for Plaintiff. Oscar L. Carlstrom, Attorney General, by B. L. Catron, Asst. Atty. General, Solicitors for Defendant.

[File endorsement omitted.]

[fol. 4] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER RESTORING CAUSE TO DOCKET AND SUBSTITUTING PARTY DEFENDANT—Filed Feb. 11, 1931

On this, the 11th day of February, 1931, this cause comes on to be heard on the Motion of the Plaintiff to set aside the Decree entered herein, on June 7, 1928, dismissing plaintiff's bill for want of equity, and re-docket this cause, both parties being represented in Court by their respective Solicitors, and on consideration thereof, it is ordered, adjudged and decreed that the decree entered hereon in June 7, 1928, dismissing Plaintiff's Bill of Complaint for want of equity and dissolved the temporary restraining order before that time entered herein, be and the same is hereby vacated and set aside, and it is ordered that this cause be restored to the docket.

And now again come the parties hereunto by their respective Solicitors, and stipulate that William J. Stratton is now the duly qualified and acting Secretary of State of the State of Illinois, succeeding Louis L. Emmerson, who is named as defendant in the Bill of Complaint filed herein. and that said William J. Stratton, as such Secretary of State of the State of Illinois be substituted as party defendant in this cause for and in place of said Louis L. Emmerson, Secretary of State of the State of Illinois.

[fol. 5] It is therefore ordered, adjudged and decreed by the Court that William J. Stratton, Secretary of State of the State of Illinois be substituted as party defendant in this cause for and in place of Louis L. Emmerson, Secretary of State, and that such substitution be without prejudice to any of the proceedings already had in this cause.

And now again come the parties to this cause, by their respective Solicitors, and it is stipulated by all the parties hereto that the plaintiff be permitted to file an amended Bill of Complaint herein, and it is therefore ordered, by the Court, that the plaintiff have leave to file an amended Bill of Complaint in this cause, and said Amended Bill of Complaint is accordingly ordered to be filed; and the Temporary Restraining Order heretofore entered herein remain in force and effect.

Enter.

Louis Fitzhenry, District Judge.

[File endorsement omitted.]

[fol. 6] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DIVISION OF THE SOUTHERN DISTRICT OF ILLINOIS

No. 800

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, a Corporation, Plaintiff,

vs.

WILLIAM J. STRATTON, Secretary of State of the State of Illinois, Defendant

Amended Bill in Equity

AMENDED BILL OF COMPLAINT—Filed Feb. 11, 1931

To the Judges of the District Court of the United States for the Southern District of Illinois, in chancery sitting:

The plaintiff, St. Louis Southwestern Railway Company, a corporation, duly created and existing under the laws of the State of Missouri, and a citizen of said State of Missouri, having its principal office and principal place of business located in the City of St. Louis in said State of Mis-

souri, brings this, its Amended Bill of Complaint, with leave of Court first had and obtained, against William J. Stratton, Secretary of State of the State of Illinois, who resides at Springfield, in the State of Illinois, and who is a citizen of said State of Illinois, and who is the duly elected, qualified and acting Secretary of State of the State of Illinois, who is now and was at the time of the acts complained of herein, a citizen and resident of the State of Illinois, and complains against said defendant as follows:

[fol. 7] 1. The grounds upon which jurisdiction of this Court depend are:

(a) Diversity of citizenship between the parties hereto; the plaintiff being a citizen and resident of the State of Missouri and the defendant being a citizen and resident of the State of Illinois, and the matter in controversy exceeding the sum or value of Three Thousand ($3,000.00) Dollars, exclusive of interest and costs, and this suit being of a civil nature in equity.

(b) This suit is of a civil nature in equity, and the matter in controversy exceeds, exclusive of interest and costs, the sum of Three Thousand ($3,000.00) Dollars, and arises under the Constitution of the United States, under subdivision 1 (a), Section 4, of the Judicial Code of the United States.

(c) This is a suit in equity, brought by the plaintiff to redress the deprivation by the defendant, under color of a Statute of the State of Illinois of rights, privileges and immunities secured to the plaintiff by the Constitution of the United States, within the Subdivision 14 of Section 4 of the Judicial Code of the United States; all of which is more fully hereinafter set forth.

2. The plaintiff, St. Louis, Southwestern Railway Company is a citizen of the State of Missouri and resides in the City of St. Louis, in said State, as is heretofore more fully set forth, and the defendant, William J. Stratton, Secretary of State of the State of Illinois, is a citizen and resident of the State of Illinois, and resides in Sangamon County in said State.

3. That on, to-wit, October 19, 1903, the plaintiff was a corporation with an authorized capital stock of $55,000,000.00, and seeking admission and authority to do business

in the State of Illinois, it, on to-wit, the 19th day of October, 1903, filed with James A. Rose, the then Secretary of State of the State of Illinois, its Affidavit and Statement seeking [fol. 8] such admission and having paid the sum of Ninety-five ($95.00) Dollars to the said then Secretary of State for said admission it was, on to-wit, October 19, 1903, duly authorized and admitted to do business in the State of Illinois for a term of eighty-eight (88) years from said date, as is evidenced by the Certificate of said James A. Rose, dated said date, and numbered 1748, a copy of which is Marked Exhibit "A," and is attached hereto and by reference made a part hereof; and that in and thereby it was certified that the amount of the plaintiff's capital stock represented in the State of Illinois was Fifty Thousand ($50,000.00) Dollars, and that the sum of Ninety-five ($95.00) Dollars paid by plaintiff to the Secretary of State was the initial admission fee exacted of plaintiff on the Fifty Thousand ($50,000.00) Dollars of its capital stock, so represented in the State of Illinois.

4. After the issuance of said Certificate of Authority to it, the plaintiff brought property into the State of Illinois and proceeded to transact business for which it is chartered in the State of Illinois.

5. Afterwards, by amendment of its Articles of Incorporation in the State of Missouri, the authorized capital stock of the plaintiff was increased from $55,000,000.00 to $130,000,000.00, and on, to-wit, February 13, 1922, plaintiff filed with the Secretary of State of the State of Illinois, a certificate of such increase of its authorized capital stock, and thereupon paid to Louis L. Emmerson the then Secretary of State of the State of Illinois, an initial fee of $315.45 on account of such increase.

6. That subsequent to October 19, 1903, the plaintiff brought property into the State of Illinois and transacted business in the State of Illinois, which property and business, as compared to the total of its property and business, represented more than $50,000.00 of its total, authorized capital and that such increase in the property brought into the State of Illinois, and business transacted in the State of Illinois was from time to time duly reported to the Secre- [fol. 9] tary of State of the State of Illinois, and the Secretary of State of the State of Illinois assessed additional in-

itial or admission fees for the additional authorized capital stock so represented in the State of Illinois. Plaintiff avers that the highest amount of its authorized capital represented by property and business in the State of Illinois did not exceed $5,500,000.00 our of the total authorized capital of $130,000,000.00 or to-wit, $1,533,324.43 of its issued capital stock of $36,249,750, and that it has never paid an initial or admission fee in the State of Illinois on more than $5,500,000.00 of its authorized capital stock.

7. Plaintiff avers that its authorized capital stock of $130,000,000.00 consists of 1,300,000 shares of stock of a par value of $100.00 each; and that on, to-wit, January 1, 1927, issued and outstanding stock of a par value of $36,249,750.00 and that the balance thereof was unissued; and the amount which had been actually issued appears by the copy of its charter then on file with the Secretary of State of the State of Illinois, and in the plaintiff's Annual Report for the year 1927, filed with Louis L. Emmerson, the then Secretary of State of the State of Illinois.

8. Plaintiff was on January 1, 1927, and has since then at all times been a common carrier by railroad, engaged in intrastate and interstate transportation of freight and passengers and as such is subject to the Interstate Commerce Act and the Transportation Act of the United States of America; that its line of railroad extends in and between the States of Illinois, Arkansas, Missouri, Louisiana, and Texas; that on to-wit, February 15, 1927, it filed with Louis L. Emmerson, the then Secretary of State of Illinois, an Annual Report sworn to by W. A. Conaway, complainant's Tax Agent, as is required by the laws of the State of Illinois, a copy of which annual report (the jurat being omitted) is attached hereto, marked "Exhibit B" and is by reference made a part hereof, and in which said Annual Report it was set forth, represented and reported to said Secretary of State; that the total value of the property of the plaintiff [fol. 10] in all States, during said year of 1926, was $76,793,697.79, and that the total business transacted by Plaintiff in all States during said year was $18,201,955.32; that the total value of the plaintiff's property for said year located in Illinois is $801,196.00 and that the total business transacted by plaintiff in said year at or from places of business in the State of Illinois is $2,868.36, all of which is more fully set

out upon the Annual Report heretofore referred to; that said Annual Report was filed with said Secretary of State under the provisions of Section 102 of the General Corporation Act of Illinois, which said Report so filed was used by the Secretary of State as the basis for determining the proportion of plaintiff's capital stock represented by property owned and business transacted in the State of Illinois, and in computing an annual franchise tax or license fee hereinafter more fully described, to be paid by the plaintiff for the year beginning July 1, 1927 and ending June 30, 1928.

9. There are two provisions of the General Corporation Act of Illinois, with reference to the computation and assessment of annual franchise taxes or license fees of corporations, which said tax or fees are exacted of all corporations, foreign and domestic, in addition to the initial fees heretofore required to be and heretofore paid by plaintiff for its authority to do business in the State of Illinois; and that by the provisions of Paragraph 105 of the General Corporation Act of Illinois, the franchise tax is based on the proportion of plaintiff's issued capital stock, which the property owned by it and located in Illinois, plus business done by it in Illinois, bears to the total of all property owned by it and all business done by it in all States; and that by Paragraph 107 of said Act, a scale of minimum taxes is provided for corporations owning no property and doing no business in the State of Illinois, which said scale of minimum [fol. 11] taxes or fees is figured on the issued stock of such corporations, and by which a corporation having an issued capital stock of $10,000,000.00 or less is required to pay an annual franchise tax or license fee of $1,000.00, a copy of which said paragraphs 105 and 107 of said General Corporation Act of Illinois are attached hereto, marked Exhibit C, and are by reference made a part hereof.

10. Plaintiff further avers that by reason of a proviso in Paragraph 105 of said Act it is provided that in no event shall the amount of the license fee or franchise tax of a foreign corporation be less than that required by the said Act of a corporation having no tangible property or business in the State of Illinois.

11. That if said franchise tax or license fee *be* paid by plaintiff for the period of July 1, 1927 to June 30, 1928, be computed according to the proportion of its issued capi-

tal stock represented by property owned and business done by it in Illinois, as compared to the total of its property and business done in all States, that then and in such case it would owe to the State of Illinois a tax of five (5¢) cents on $100.00 of .00746% of its issued capital stock, which tax would amount to $135.21, and which amount plaintiff is ready and willing, and at all times has been ready and willing to pay to the defendant herein, account said franchise tax.

12. That the predecessor in office of the defendant, William J. Stratton, to-wit: Louis L. Emmerson, as Secretary of State of the State of Illinois did, over the objection and protest of the plaintiff, assess said franchise tax or license fee for the year July 1, 1927 to June 30, 1928, at the sum of $1,000.00; that on being advised of said assessment plaintiff notified said Secretary of State that it objected to the amount of said tax as fixed by him and requested a hearing in regard thereto, and that said Secretary of State neglected, failed and refused to fix a time and place for said hearing, and that plaintiff's agent called at the office of said Secretary of State and explained fully [fol. 12] to his Assistant in charge of the Assessment of franchise taxes, the contention of plaintiff by virtue of which a franchise tax for the year July 1, 1927 to June 30, 1928, in an amount not exceeding $135.21, was due and that said Assistant, on behalf of and with the authority of said Louis L. Emmerson, insisted that a franchise tax of $1,000.00 was due and refused to change the amount of said tax as assessed; and informed plaintiff's agent of the purpose of said Secretary of State to insist upon the payment of the tax as so assessed, and in the event of nonpayment to enforce all of the penalties and forfeitures provided by law in the event of the nonpayment of such franchise tax.

13. Plaintiff further avers that the Secretary of State of Illinois claims that under said General Corporation Act of Illinois and particularly Sections 105 and 107 thereof, a minimum franchise tax for the year aforesaid based on the scale of minimums set forth in Section 107 of said Act, can be lawfully collected from corporations on the basis of the total amount of its issued capital stock, irrespective

of the amount of said issued capital stock represented by property owned and business done in the State of Illinois, while plaintiff denies that the State of Illinois can lawfully collect such minimum tax from it and that the tax that the State of Illinois may lawfully collect for said year is limited to 5¢ on each $100.00 of its issued capital stock represented by property owned and business done by it in the State during the calendar year of 1926; and contends that to permit defendant and the State of Illinois to collect said minimum tax based on the total amount of its issued capital stock would deprive plaintiff of its rights guaranteed to it by the Constitution of the United States of America.

1. Unreasonably burdening and directly taxing plaintiff's commerce between the states, in violation of Section 10 of Article I of the Constitution of the United States.

[fol. 13] 2. Taxing plaintiff's property and business outside the State of Illinois, and thereby depriving plaintiff of its property without due process, contrary to the Fourteenth Amendment to the Constitution of the United States.

3. Charging plaintiff more than was charged other corporations for the same privileges and discriminating against plaintiff in favor of other foreign and domestic corporations, thereby denying it the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States.

And that as applied to it by the defendant, Paragraphs 105 and/or 107 of the General Corporation Act of Illinois are void.

14. Plaintiff further shows that there is no method provided by the laws of the State of Illinois for an appeal from the assessment of said tax as aforesaid by the defendants and his predecessor in office; and that there is no provision in said law whereby the fixing of said tax as aforesaid may be reviewed by a Court; that it is the duty of the defendant on the failure of plaintiff or any foreign corporation, to pay the franchise tax so assessed, to forfeit the right of such corporation to do business in the State of Illinois, and to make illegal and unlawful under

the laws of the State of Illinois any business, contract made by the plaintiff or such corporation in said State and to enforce divers penalties, including criminal prosecution, against the plaintiff, its officers or employees on the ground that it has failed to pay said tax, to comply with the General Corporation Act, and is unlawfully doing business in Illinois; that the Agent of the Secretary of State in charge of the assessment of said taxes has informed plaintiff of the purpose of the defendant to collect said tax of $1,000.00 as so assessed and on the nonpayment thereof it is the purpose of the defendant to enforce all of the forfeitures and penalties as provided by the laws of the State of Illinois.

[fol. 14] 15. Plaintiff represents that this is a suit in equity, brought to restrain the enforcement, operation and execution of the Statutes of the State of Illinois, known as the General Corporation Act of Illinois, and particularly Sections 105, 107, 92 and 114 thereof, which provide for the payment of a minimum franchise tax of $1,000.00, by plaintiff, based solely on plaintiff's total issued capital stock, on penalty of forfeiting plaintiff's authority to do business in the State of Illinois, and the suffering by plaintiff and plaintiff's employees by divers fines and penalties, by restraining an officer of said State, namely, the defendant, William J. Stratton, Secretary of State of the State of Illinois, from, after the payment of a tax of $135.21, by plaintiff, enforcing the aforesaid provisions of the said Statute, and foregoing provisions thereof, as sought to be applied to the plaintiff are void and unconstitutional under the provisions of the Constitution of the United States of America heretofore mentioned; that this suit is brought to prevent the defendant, under color of the said Illinois Statutes, from depriving it from privileges and immunities secured to it by the Constitution of the United States of America, and to prevent the defendant from depriving plaintiff under color of the aforesaid Statutes, of rights, privileges and immunities secured to the plaintiff by the Constitution of the United States of America; further, that this is a suit of a civil nature, being a Bill in Equity filed by the plaintiff, a citizen and resident of the State of Missouri, against the defendant, a citizen of the State of Illinois, to enjoin the defendant, his agents, attorneys

and employees from enforcing or undertaking to enforce against the plaintiff certain penalties provided by the Statute of the State of Illinois, account plaintiff's failure to pay the annual license fee or franchise tax heretofore referred to; that there is involved in this controversy the right and authority of plaintiff to do business in the State of Illinois, the value of which right, exclusive of interest [fol. 15] and costs, exceeds the sum of $3,000.00, and is of a worth to the plaintiff of the value of, to-wit, $5,000.00; and in this, that the defendant seeks to enforce the plaintiff to pay a franchise tax in the sum of $1,000.00 together with an additional penalty of 5% per month after August 1, 1927, which tax and penalties are made a first and prior lien upon the property of the plaintiff in the State of Illinois; that there is involved the right and authority of the plaintiff to do and transact business in the State of Illinois, which business and penalties would exceed the amount of $3,000.00; and that to revoke the authority of the plaintiff to do business in the State of Illinois would damage the plaintiff in the large sum of to-wit, $5,000.00 or more.

Plaintiff further represents that said Sections 105 and 107 of the General Corporation Act of Illinois, as applied to your orator by the defendant, William J. Stratton, are illegal and unconstitutional in that such application unreasonably interferes with and directly burdens Commerce between the different states in violation of Section 10 of Article I of the Constitution of the United States; and in that it deprives this plaintiff, a citizen of the State of Missouri, of privileges and immunities enjoyed in Illinois by the citizens of other states, in violation of Section 2 of Article IV of the Constitution of the United States; in that it abridges the privileges and immunities of the plaintiff, a citizen of the state of Missouri, discriminating against it in favor of other corporations, both foreign and domestic, similarly situated as to property owned and business done in Illinois, and deprives Plaintiff of its property without due process of law and denies your orator of the equal protection of the law, all in violation of the XIV Amendment to the Constitution of the United States; in that such application by said defendant, imposes a franchise tax based not upon the proportion of issued capital stock of the plaintiff, represented by property owned and business done in Illinois, but is

[fol. 16] based upon an arbitrary minimum franchise tax determined by the total issued capital stock of the plaintiff, which, when applied, results in a tax on the plaintiff larger than the tax imposed on like business and property within the State of Illinois.

Plaintiff further shows to the Court that because of its failure and refusal to pay said franchise tax as assessed against it, said defendant threatens, intends to and will take steps to revoke and terminate the authority of the plaintiff to do business in the State of Illinois; and institute proceedings to collect said tax and to enforce the penalties provided by said General Corporation Act against it, its officers and employees, and that by reason of the duties and powers placed upon the defendant, in and for the collection of said tax and in the enforcement of said penalties, the plaintiff is threatened with great and irreparable injury for which it cannot be adequately compensated at law, and has no adequate remedy at law.

Plaintiff further shows unto the Court that it cannot obtain relief or protection elsewhere than from the Court through the exercise of a writ of injunction to restrain said unlawful acts on the part of the defendant.

And in order that the plaintiff, its officers, employees, and property may be protected against the unlawful and unjustifiable threatened acts and actions of the defendant, the plaintiff respectfully prays:

1. That process of subpœna issue herein, directed to the defendant, William J. Stratton, as Secretary of State of the State of Illinois, directing him to appear and answer the allegations herein contained, but not under oath, answer under oath being hereby expressly waived.

2. That an injunction issue herein, perpetually enjoining the defendant, William J. Stratton, Secretary of State of the State of Illinois, and all successors, employees, attorneys, agents and all persons acting for and under his in-
[fol. 17] structions, from in any form or manner whatsoever assessing against the plaintiff any franchise or license tax whatsoever under the provisions of Sections 105 and 107 of the General Corporation Act of the State of Illinois, for the year beginning July 1, 1927, and ending June 30, 1928, in excess of the amount of $135.21, or from hereafter at any time assessing any franchise tax against the plain-

tiff, based on the minimum scale fixed by Section 107 of said Act, as applied by Section 105 of said Act.

3. That an injunction issue herein, perpetually enjoining the defendant, William J. Stratton, as Secretary of State of the State of Illinois, his successors, employees, clerks, agents, attorneys, and all persons acting for or under his instructions, from in any manner whatsoever revoking or taking steps to revoke the certificate of authority of the plaintiff to do business within the State of Illinois, because or on account of the refusal of Plaintiff to pay the Franchise Tax of $1000.00, as aforesaid, or any part thereof in excess of $135.21 assessed by him against the plaintiff.

4. That an injunction issue herein, perpetually enjoining the said defendant, William J. Stratton, as Secretary of State of the State of Illinois, his successors, employees, attorneys, agents and all persons acting for or under his instruction, from hindering or forbidding the plaintiff to transact business in the State of Illinois, or from instituting any proceedings or filing any complaint, either at law or in equity, or in any manner taking any steps whatsoever to enforce any of the penalties, forfeitures or prohibitions against the plaintiff, its officers and employees, on account of the refusal of the plaintiff to pay said franchise tax of $1,000.00 aforesaid, or any part thereof, in excess of $135.21, as assessed against it.

5. That a restraining order or a preliminary injunction be issued without delay, directed to William J. Stratton as Secretary of State of the State of Illinois, enjoining and restraining him as heretofore herein prayed for.

[fol. 18] And for such other and further relief as may appear to be just and reasonable.

St. Louis Southwestern Railway Company, by Josiah Whitnel, H. L. Browning, Solicitors for Plaintiff.

Duly sworn to by W. A. Conaway. Jurat omitted in printing.

[fol. 19] EXHIBIT "A" TO AMENDED BILL OF COMPLAINT

No. 1748

State of Illinois

Department of State

James A. Rose, Secretary of State

Certificate

Whereas St. Louis Southwestern Railway Company, Incorporated under the laws of the State of Missouri, has filed in the office of the Secretary of State duly authenticated evidence of its incorporation, as provided by law, and has, in all respects, complied with the requirements of law governing Foreign Corporations.

Now, therefore, I, James A. Rose, Secretary of State of the State of Illinois, in virtue and by authority of law, do hereby certify that said St. Louis Southwestern Railway Company is from the date hereof duly authorized to do business in the State of Illinois for a term of eighty-eight years and is entitled to all the rights and privileges granted to Foreign Corporations under the laws of this State, and that the amount of the Capital Stock of said Corporation is fifty five million Dollars and the amount of said capital stock represented in the State of Illinois is fifty thousand Dollars.

In testimony whereof I hereunto set my hand and cause to be affixed the Great Seal of State.

Done at the City of Springfield, this 19th day of October, A. D. 1903, and of the Independence of the United States the one hundred and 28th.

(Signed) James A. Rose, Secretary of State. (Seal.)

[fol. 20] EXHIBIT "B" TO AMENDED BILL OF COMPLAINT

Annual Report

To Louis L. Emmerson, Secretary of State of the State of Illinois:

Report of St. Louis Southwestern Railway Company, Organized Under the Laws of the State of Missouri, as Required Under an Act Entitled "An Act in Relation to Corporations for Pecuniary Profit", Approved June 28, 1919, in Force July 1, 1919, and All Acts Amendatory Thereof

1. State your name and official position with the corporation. (Whether president, vice-president, secretary, assistant secretary, treasurer, receiver, assignee or trustee.) W. A. Conaway, Tax Agent.

2. The location of the principal business office of the corporation in the State of Illinois is at No. 505-511 First Nat'l Bank Bldg. in the City of East St. Louis County of St. Clair and the names and residences of the officers and directors of said corporation are as follows:

Names of Officers and Directors

Name	Office	Number and street	Residence, City, State
Daniel Upthegrove	President		St. Louis, Mo.
Paul J. Longua	Secretary		New York, N. Y.
C. Messick	Treasurer		St. Louis, Mo.
Edwin Gould	Director		New York, N. Y.
Charles Hayden	Director		" "
L. F. Loree	Director		" "
Winslow S. Pierce	Director		" "
Paul Rosenthal	Director		" "
E. Roland Harriman	Director		" "
Daniel Upthegrove	Director		St. Louis, Mo.
Carl F. G. Meyer	Director		" "
F. W. Green	Director		" "

NOTICE.—Must give officers and show management of corporation is vested in at least three Directors.

3. Has the corporation acquired title to any real estate in securing any debt or liability due it?

Ans. No.

4. Give a description of such property, if any has been acquired, and the date of the acquisition and disposal of such property.

None.

5. Has the corporation entered into any illegal pool, trust, agreement, combination, confederation or understanding in restraint of trade in contravention of any Act of this State concerning such matters?

Ans. No.

6. State the amount of authorized capital stock of corporation. Authorized is $130,000,000.00; Issued and outstanding is $36,249,750.00; Shares of no par value, None.

When a corporation has shares of no par value such shares must be reported separately.

[fol. 21] 7. Does the corporation wish to pay a franchise tax based upon its entire authorized capital stock?

Ans. No.

8. In the event that the corporation is assessed a franchise tax upon its entire authorized capitalization, will it be paid promptly?

Ans. ——.

9. State briefly the nature of business in which the corporation is actively engaged under its charter at the present time. State and Interstate transportation of freight, passengers, mail, express and baggage. ——.

10. Give the total value of all the property of the corporation everywhere, specifying:

(a) Value of patent rights, licenses, trade-marks, secret processes, copyrights, good will, contracts, or choses in action.

Ans. None.

(b) Merchandise raw materials and goods in process of manufacture.

Ans. None.

(c) Book accounts and notes.

Ans. $433,713.62

(d) Machinery and real estate Inc. in road and equipment.

(e) Stock in other corporations and securities.

Ans. $10,740,691.92.

(f) Furniture, fixtures, stationery Inc. in road & equipment.

(g) Cash in bank.

Ans. $1,583,502.11.

(h) Kinds and amounts of other property, specifying in detail; Road & equipment $76,793,697.79.

11. Give the total value of all the property of the corporation located in Illinois, specifying:

(a) Value of the patent rights, trade-marks, secret processes, copyrights, good will, contracts or choases in action.

Ans. None.

(b) Merchandise, raw materials and goods in process of manufacture.

Ans. None.

(c) Book accounts and notes.

Ans. None.

(d) Machinery and real estate.

—. None.

(e) Stock in other corporations and securities.

Ans. $15,000.00.

(f) Furniture, fixtures, stationery.

— None.

(g) Cash in bank.

Ans. None.

(h) Kinds and amounts of other property, specifying in detail: Illinois proportion of rolling stock, $786,196.00.

12. Give the location of the principal places of business of the corporation in each State, and the amount of business transacted through each, last year. Various stations along line in States of Missouri, Arkansas and Louisiana.

13. State the total business of the corporation transacted everywhere during the past year. $18,201,955.32.

[fol. 22] 14. State the total business of the corporation for the past year transacted by it at or from places of business in the State of Illinois.

Ans. $2,868.36.

15. In case of a telegraph, telephone, cable, railroad, or pipe line company, state the total length of such telegraph, telephone, cable, railroad or pipe line, wherever located. 940.58.

16. State the length of such telegraph, telephone, cable, railroad or pipe line actually located in Illinois.

None.

17. From what office are the affairs of the corporation managed?

Ans. Daniel Upthegrove, President, Buder Bldg., St. Louis, Mo.

18. To what office or offices are all contracts with the corporation forwarded for final acceptance?

Ans. Same as #17.

19. Is the corporation actually transacting business at the present time in the State where it was incorporated?

Ans. Yes.

20. At what office or offices are directors and stockholders meetings held?

Ans. Buder Bldg., St. Louis, Mo.

In witness whereof I have hereunto set my hand and caused the seal of said corporation to be affixed this — day of February, A. D. 1927.

(Signed) W. A. Conaway, Tax Agent. (Affix corporate seal here.)

STATE OF MISSOURI,
City of St. Louis, ss:

I, W. A. Conaway, being duly sworn, declare on oath that I am Tax Agent of the corporation mentioned in the foregoing report, and that all the statements therein made are true.

—— ——

Subscribed and sworn to before me this — day of February, A. D. 1927. —— ——, Notary Public. (Notarial Seal.)

[fols. 23 & 24] EXHIBIT "C" TO AMENDED BILL OF COMPLAINT

No. 105. Annual License Fee or Franchise Tax—Amount—Minimum—No Par Value Stock.—"Each cor-

poration for profit, including railroads, except insurance companies, heretofore or hereafter organized under the laws of this state or admitted to do business in this state, and required by this act to make an annual report, shall pay an annual license fee or franchise tax to the Secretary of State of five cents on each one hundred dollars of the proportion of its issued capital stock, or amount to be issued at once, represented by business transacted and property located in this state, but in no event shall the amount of such license fee or franchise tax be less than that required by this act of corporations having no property or busines in this state.

"In the event that the corporation has stock of no par value, its shares, for the purpose of fixing such fee, shall be taken and considered at the amount of the consideration received or to be received by such corporation for such shares."

No. 106. Ascertainment of License Fee or Franchise Tax in Case of Corporations Generally.—"In ascertaining the amount of the issued capital stock represented by business transacted and property located in this state, the sum of the business of any foreign or domestic corporation transacted in this state and the total property of such corporation located within this state shall be divided by the sum of the total business of the corporation, and the total property of the corporation wherever situated."

No. 107. In case it appears from the annual report that the corporation has no property located in this State, and is transacting no business in this state, the following fees shall be paid annually to the Secretary of State as an annual franchise tax: All such corporation- having issued. capital stock of $50,000 or less shall pay an annual fee of $10; corporations having issued capital stock of more than $50,000, but not exceeding $200,000, shall pay an annual fee of $15.00; corporations having issued capital stock of more than $200,000, but not exceeding $500,000, shall pay an annual fee of $20; corporations having issued capital stock of more than $1,000,000, but not exceeding $10,000,000, shall pay a fee of $200; corporations having issued capital stock of more than $10,000,000, but not exceeding $20,000,000, shall pay a fee of $500; and all corporations

having issued capital stock in excess of $20,000,000 shall pay an annual fee of $1,000.

[File endorsement omitted.]

[fol. 25] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR INTERLOCUTORY INJUNCTION—Filed Feb. 11, 1931

To the Honorable the Judges of the District Court of the United States for the Southern District of Illinois, Southern Division:

Upon the verified Bill of Complaint filed herein and the Affidavit of W. A. Conaway, annexed thereto, and upon the proceedings had herein, the St. Louis Southwestern Railway Company, the plaintiff above named, makes application to your Honors for a writ of injunction enjoining and restraining, pending the final judgment in this action, and until the further order of this Court, the defendant and his officers, agents, servants and employees, and any and every other person acting under and by virtue of the authority of the Secretary of State of the State of Illinois and the General Corporation Act of Illinois, and any other law of the State of Illinois, in so far as any of said laws relates or provides for the enforcement of the penalties and forfeitures provided for by said General Corporation Act of Illinois, to be enforced against this plaintiff account its failure to pay franchise or license tax assessed in the sum of $1000.00 to the State of Illinois, for the year beginning July 1, 1926, and ending June 30, 1927, and plaintiff prays your Honors to call to your Honors' assistance to hear and determine this application, two other judges in accordance with the provisions of Section 266 of the Judicial Code, and to expedite the hearing of this application, and set the same down for hearing at the earliest practical [fols. 26 & 27] date; and for such other and further relief as to the Court may seem just and proper in the premises.

Dated at East St. Louis, Illinois, this 7th day of February, A. D. 1931.

Josiah Whitnel, H. L. Browning, Solicitors for Plaintiff.

[File endorsement omitted.]

[fols. 28 & 29] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER CONVENING STATUTORY THREE-JUDGE COURT—Filed Feb. 13, 1931

Pursuant to Section 266 of the Judicial Code, on application to me by St. Louis Southwestern Railway Company, plaintiff in the above entitled cause, for an interlocutory injunction in said cause, and it appearing that the Bill of Complaint in said cause is brought to enjoin the enforcement of a statute of the State of Illinois, on the ground that such statute as applied to the Plaintiff is a violation of the Constitution of the United States, and the Defendant having filed a motion to dismiss said Bill for want of equity,

I hereby call to my assistance for the hearing of said application and motions, the Honorable Samuel Alschuler, Senior United States Circuit Judge, and the Honorable George T. Page, a retired Circuit Judge for the Seventh Circuit and assigned to the Southern District of Illinois, said hearing to be held at the Court House in Springfield, in the Southern District of Illinois, on Wednesday, the 18th day of February, A. D. 1931, at ten o'clock A. M.

Dated February 13, 1931.

Louis Fitzhenry, District Judge.

[File endorsement omitted.]

[fols. 30 & 31] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO DISMISS—Filed Feb. 11, 1931

And now comes the above named defendant, by Oscar E. Carlstrom, Attorney General of the State of Illinois, his attorney, and moves the Court to dismiss the amended bill of complaint filed herein for want of equity, and to grant such other and further relief in the premises as may be just.

Oscar E. Carlstrom, Attorney General of the State of Illinois, Attorney for Defendant. B. L. Catron, Assistant Attorney General, of Counsel.

[File endorsement omitted.]

[fol. 32] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF HEARING—Filed Feb. 18, 1931

To the Honorable Louis L. Emmerson, Governor of the State of Illinois, and to the Honorable Oscar E. Carlstrom, Attorney General of the State of Illinois:

You and each of you are hereby given notice, pursuant to the provisions of Section 266 of the Judicial Code, that the District Court of the United States for the Southern District of Illinois, Southern Division, has set for hearing and determination in the Federal Court Room in the Post Office Building in the City of Springfield, State of Illinois, on the 18th day of February, 1931, at 10:00 o'clock in the forenoon of said day, the application for a preliminary or interlocutory injunction in the suit above entitled, brought by the St. Louis Southwestern Railway Company, Plaintiff, against William J. Stratton (successor to Louis L. Emmerson), Secretary of State of the State of Illinois, being cause numbered 800, In Equity, to enjoin the enforcement of the provisions of the General Corporation Act of Illinois, by enjoining William J. Stratton as Secretary of State of Illinois, from forfeiting the authority of the plaintiff to do business in said State and from enforcing the fines, penal-

ties and forfeitures account the failure of the plaintiff to pay a franchise tax of One Thousand ($1,000.00) Dollars assessed against it for the year July 1, 1926, to June 30, 1927, on the ground that said Statute, as applied to the plaintiff, violates the Constitution of the United States in [fol. 33] that such enforcement would unreasonably interfere with and directly burden commerce between the different states, carried on by plaintiff, in violation of Section 10 of Article I of the Constitution of the United States; and would deprive the plaintiff, a citizen of the State of Missouri, of privileges and immunities enjoyed in Illinois by the citizens of other states, in violation of Section 2 of Article IV of the Constitution of the United States; and would abridge privileges and immunities of plaintiff, a citizen of the State of Missouri, and would deprive the plaintiff of equal protection of the laws and would deprive plaintiff of property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

There is served upon each of you herewith, copies of the Bill of Complaint in said cause, copies of Motion for Interlocutory Injunction and the Order of the District Court granting a temporary restraining order and convoking a three-judge Court for the hearing of said application for an interlocutory injunction, as provided for by said Section 266 of the Judicial Code.

Dated at East St. Louis, Illinois, this 11the day of February, A. D. 1931.

Josiah Whitnel, H. L. Browning, Solicitors for Plaintiff.

Service of the foregoing notice accepted this 12th day of February, A. D. 1931.

Louis L. Emmerson, Governor of the State of Illinois. Oscar E. Carlstrom, Attorney General of the State of Illinois.

[File endorsement omitted.]

[fol. 34] [Caption omitted]

[fols. 35 & 36] Minute entry of argument and submission Wednesday, February 18, 1931, omitted in printing.

[fol. 37] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS, SOUTHERN DIVISION

No. Eq. 800

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

vs.

WILLIAM J. STRATTON, Secretary of State of the State of Illinois

Before Alschuler and Page, Circuit Judges, and FitzHenry, District Judge

OPINION—Filed Mar. 7, 1931

Per Curiam:

Upon remandment of this cause to the Circuit Court of Appeals, pursuant to the decision of the Supreme Court in Stratton v. St. Louis Southwestern Ry. Co., 282 U. S. 10, the appeal to the Circuit Court of Appeals was dismissed. Thereupon the District Court, with three judges sitting, heard plaintiff's application for temporary injunction, and defendant's motion to dismiss the bill for want of equity.

The facts are as stated in the Supreme Court opinion. Plaintiff's amended bill, filed after the dismissal of the appeal is in all essential respects like the original bill.

One of the judges here sitting has hitherto expressed his views of the case in an opinion appearing in 27 F. (2d) 1095, and the other two of the judges have heretofore concurred in opposite views in an opinion reported in 30 F. (2d) 322. Whatever, after the full and able presentation of the case before us, may be the respective views of the Judges as to those opinions, it appears that the question involved has been definitely settled by a later decision by the Supreme Court in the case of Cudahy Packing Co. v. Hinkle, Secretary of State, et al, 278 U. S. 460. This case

[fols. 38 & 39] involved a statute of Washington in all essential respects like the one herein issue. A tax similar to that here demanded was there sought to be imposed, and the Supreme Court held the statute, as applied to the tax there involved to be unconstitutional. In view of the discussion there presented our further elaboration will be quite unnecessary.

Temporary injunction is hereby awarded in accordance with the prayer of the bill.

Defendant's motion to dismiss the bill for want of equity is denied.

Defendant having elected to stand by his motion to dismiss the bill for want of equity, final decree will be entered awarding plaintiff a permanent injunction as prayed for in its bill of complaint.

Samuel Alschuler, George T. Page, C. J.; Louis FitzHenry.

[File endorsement omitted.]

[fols. 40 & 41] In United States District Court

[Title omitted]

Exceptions to Order Granting Injunction—Filed April 27, 1931

Now comes the defendant, William J. Stratton, as Secretary of State of Illinois, by Oscar E. Carlstrom, Attorney General, his solicitor, and excepts to the decision and order of Court entered herein granting an interlocutory injunction against this defendant, as set forth in said order, and denying the motion of this defendant to dismiss the amended bill of complaint herein, and upon the election of this defendant to stand by his motion to dismiss said bill, further ordering that a permanent injunction be awarded the plaintiff as prayed in said amended bill of complaint and as set forth in said order, and prays the Court to allow it an exception on account thereof.

Oscar E. Carlstrom, Attorney General, Solicitor for Defendant. B. L. Catron, Assistant Attorney General, of Counsel.

[File endorsement omitted.]

[fol. 42] Statutory three-judge court convened pursuant to Section 266 of the Judicial Code, the Honorable Samuel Alschuler, senior United States circuit judge; the Honorable George T. Page, retired circuit judge for the Seventh Circuit assigned to the Southern District of Illinois, and the Honorable Louis FitzHenry, judge of the District Court of the United States, for the Southern District of Illinois, Southern Division.

IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS, SOUTHERN DIVISION

In Equity. No. 800

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Plaintiff,

vs.

WILLIAM J. STRATTON, Secretary of State of the State of Illinois, Defendant

DECREE GRANTING INTERLOCUTORY AND PERMANENT INJUNCTION, ALLOWING APPEAL, ETC.—Filed April 27, 1931

This cause came on for hearing on February 18, 1931, before a Statutory Three-Judge Court convened by the Honorable Louis Fitzhenry, District Judge for the Southern District of Illinois, Southern Division, by calling to his assistance the Honorable Samuel Alschuler, Justice of the Circuit Court of Appeals for the Seventh Circuit and the Honorable George T. Page, a retired Circuit Judge for the Seventh Circuit and assigned to the Southern District of Illinois, pursuant to Section 266 of the Judicial Code, upon the application of the St. Louis Southwestern Railway Company, plaintiff, in the above entitled cause, for an interlocutory injunction, pursuant to plaintiff's Bill of Complaint, praying an interlocutory and Final Decree, enjoining and restraining the enforcement of Sections 92, 105, 107 and 114 of the General Corporation Act of the State of Illi-
[fol. 43] nois, as applied to the plaintiff by William J. Stratton, Secretary of State of Illinois, defendant, by enjoining said defendant, his successors in office, attorneys, agents and all persons acting for and under his instruction, from forfeiting the authority of the plaintiff to do business in the State of Illinois and from enforcing divers penalties and forfeitures provided by the statutes of the State of Illinois in force on account of the plaintiff's failure to pay a franchise tax for the year July 1, 1927 to June 30, 1928, as-

sessed in the amount of One Thousand ($1,000.00) Dollars, or in any amount exceeding One Hundred Thirty-five and 21/100 ($135.21) Dollars, on the ground that said Statutes, as sought to be applied to the plaintiff, violate the Constitution of the United States, in that they act to deprive the plaintiff of its property without due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States; unreasonably burden and directly tax interstate commerce between the State, carried on by the plaintiff, in violation of Section 10, Article I of the Constitution of the United States; and discriminate against the plaintiff and in favor of other foreign and domestic corporations, denying plaintiff equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States; said Court being also convened to consider the Motion by the defendant, William J. Stratton, Secretary of State, to Dismiss said Bill of Complaint; for want of equity; and upon consideration of the verified Bill of Complaint and the Affidavit of W. A. Conaway, in support thereof and after hearing evidence, both in support of and in opposition to said application, and it appearing that said application was duly set down for hearing at Springfield, Illinois, on the 18th day of February, 1931, and that five days notice of said hearing had been waived by the defendant in this cause, as well as by the Honorable Louis L. Emmerson, Governor of the State of Illinois, and the Honorable Oscar E. Carlstrom, Attorney Gen-
[fol. 44] eral of the State of Illinois, and after hearing Counsel, said cause is taken under advisement; and now on this the 27th day of April, 1931, this cause again comes on for hearing and after consideration thereof,

It is ordered, adjudged and decreed by said Three Judge Court that the defendant, William J. Stratton, Secretary of State of the State of Illinois, his successors in office, attorneys, agents, employees and all persons acting under his authority be and they are hereby enjoined pending further order herein, from forfeiting the right of plaintiff to transact business in the State of Illinois, or in any manner taking any steps whatsoever to enforce any of the penalties, forfeitures and prohibitions against the plaintiff, its officers and employees on account of its refusal to pay a franchise tax in the amount of One Thousand ($1,000.) Dollars, from July 1, 1927 to June 30, 1928, or to pay any franchise tax

for said year in excess of the sum of One Hundred Thirty-five and 21/100 ($135.21) Dollars.

It is further ordered, adjudged and decreed, that the Motion by the defendant to dismiss the Bill of Complaint be denied; and the defendant having elected to stand by his motion to dismiss the Bill of Complaint for want of equity, it is further ordered, adjudged and decreed that a Permanent Injunction be awarded the plaintiff as prayed for in said Bill of Complaint and as hereinbefore is set forth.

Whereupon, the defendant excepts to the Decree of the Court granting said interlocutory injunction, denying his motion to dismiss and in granting a permanent injunction herein and prays an appeal to the Supreme Court of the United States and the defendant having presented and filed his petition for appeal, assignment of errors and prayer for reversal, pursuant to the mandates and rules of the Supreme Court of the United States in such case made and provided:

It is therefore ordered, adjudged and decreed that an appeal be and the same is hereby allowed to the Supreme Court of the United States from this Court, as is provided by law. [fols. 45 & 46] And it is further ordered, that the Clerk of the United States District Court, for the Southern District of Illinois, Southern Division, shall prepare and certify a transcript of the record, proceedings and papers upon which said Orders were made in this cause and transmit the same to the Supreme Court of the United States, so that he shall have the same there within thirty (30) days of this time.

And it is further ordered, that security for costs, on appeal herein be fixed at Five Hundred ($500.00) Dollars.

Samuel Alschuler, Circuit Judge, Seventh Circuit.
George T. Page, Circuit Judge, Seventh Circuit.
Louis Fitzhenry, District Judge for the Southern District of Illinois.

[File endorsement omitted.]

[fol. 47] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed April 27, 1931

The defendant, William J. Stratton, as Secretary of State of Illinois, considering himself aggrieved by the orders and

decree made and entered herein on the 27th day of April, 1931, by the Statutory Three Judge Court convened herein, granting an interlocutory injunction against this defendant as prayed in the amended bill of complaint herein and as set forth in said order, and denying the motion of this defendant to dismiss the said bill and further ordering that a permanent injunction is awarded the plaintiff as prayed in his said bill and set forth in said order, hereby prays that an appeal from said orders and decree to the Supreme Court of the United States may be allowed for the reasons specified and set forth in the assignment of errors hereinafter set forth, and that the amount of bond thereon may be fixed by the Court and that a transcript of the record, proceedings and papers upon which said orders were made, duly authenticated, may be made and transmitted to the Supreme Court of the United States, as provided by law.

Assignment of Errors

And the said appellant hereby assigns the following errors in the record and proceedings in said cause:

[fol. 48] 1. The said Statutory Court erred in ordering and decreeing that this appellant and his successors in office, atttorneys, agents, employees and all persons acting under him be enjoined, pending the further order in said cause, from forfeiting the authority of the appellee herein to do business in the State of Illinois and from enforcing the provisions of the statutes of the State of Illinois, on account of the failure of the appellee herein to pay the franchise tax assessed against it in the amount of $1000, for the privilege granted to exercise its franchise in said State for the year beginning July 1, 1927, and ending June 30, 1928, as set forth in said order.

2. The said Statutory Court erred in denying the motion of this appellant to dismiss the amended bill of complaint for want of equity.

3. The said Statutory Court erred in further ordering that a permanent injunction be awarded to the appellee herein as prayed for in its said bill of complaint and as set forth in said decree.

4. The said Statutory Court erred in refusing to allow the said motion of this appellant to dismiss the said bill of

complaint for want of equity, for the reason that the said franchise tax assessed by this appellant against the appellee for the privileges granted to it by said State for said year did not impose any unlawful burden on the interstate commerce of the appellee, or deprive it of any of its property without due process of law, or deny it equal protection of the laws, or abridge any of its privileges or immunities as a citizen, or violate any provision of the Constitution of the United States or the Fourteenth Amendment thereto, as alleged in said amended bill of complaint.

5. The said Statutory Court erred in holding in effect that Section 107 of the General Corporation Act of Illinois, as applied to the appellee herein imposes an invalid tax under the decision referred to in the opinion filed by said Court herein, or any of the decisions of the Supreme Court of the United States.

[fols. 49 & 50] 6. The said Statutory Court erred in holding in effect that said Corporation Act of said State, as applied to the appellee herein, imposes an unlawful burden upon the capital, property or business of the appellee outside of said State, or discriminates against the appellee or denies to it the equal protection of the laws, or takes any of its property without due process of law, as alleged in the said amended bill of complaint.

Prayer for Reversal

For each and all of which said errors the appellant herein prays that the said orders and decree of the said Statutory Court in said cause may be reversed, set aside and for naught held and that said cause may be remanded to said District Court with instructions to dismiss said amended bill of complaint for want of equity.

Oscar E. Carlstrom, Attorney General, Solicitor for Appellant. B. L. Catron, Assistant Attorney General, of Counsel.

[File endorsement omitted.]

[fols. 51-55] Bond on appeal for $500.00, approved and filed May 7, 1931, omitted in printing.

[fol. 56] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed May 6, 1931

To the Honorable S. T. Burnett, Clerk of the District Court of the United States for the Southern District of Illinois, Southern Division:

You will please prepare a transcript of the record in the above entitled cause, for appeal to the Supreme Court of the United States, and include therein the following, to-wit:

1. Placita.
2. Stipulation and order for substitution and amended bill.
3. Amended Bill of Complaint.
4. Motion for Interlocutory Injunction.
5. Order convening Statutory Three Judge Court.
6. Notice to Governor and Attorney General.
7. Motion to dismiss Amended Bill of Complaint.
8. Opinion and Orders of Statutory Three Judge Court.
9. Exceptions to order granting injunction, etc.
10. Decree granting Interlocutory and Permanent Injunction and denying Motion to dismiss amended bill of complaint, with order allowing appeal and fixing bond for appeal.

[fol. 57] 11. Petition for appeal to the Supreme Court of the United States, with assignment of errors and prayer for reversal.

12. Bond on appeal and approval of same.
13. Citation and return thereon.
14. Præcipe for record with proof of service.
15. All other orders and proceedings of said District Court of the United States subsequent to the filing of the amended bill of complaint in said cause.

Dated this 5th day of May, A. D. 1931.

Oscar E. Carlstrom, Attorney General of Illinois, Counsel for Appellant. B. L. Catron, Assistant Attorney General, of Counsel.

Received a copy of the foregoing præcipe for record this 6th day of May, 1931.

Josiah Whitnel, H. L. Browning, Counsel for Appellee.

[File endorsement omitted.]

[fol. 58] Citation, in usual form, showing service on Josiah Whitnel and J. R. Turney, filed May 7, 1931, omitted in printing.

[fol. 59] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 60] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION TO PRINT ENTIRE RECORD—Filed June 26, 1931

Comes now the appellant in the above entitled cause and states that he adopts his assignments of error as his statement of the points upon which he intends to rely in this Court in this case.

And the appellant further states and represents that the whole of the record in said cause, as filed herein, is necessary for the consideration of the case in this Court.

Oscar E. Carlstrom, Attorney General of the State of Illinois, Counsel for Appellant. B. L. Catron, Assistant Attorney General, of Counsel.

Received a copy of the foregoing statement of points to be relied upon and designation of parts of record to be printed in the above entitled cause this 22nd day of June, 1931.

Josiah Whitnel, Counsel for Appellee.

[fol. 61] [File endorsement omitted.]

Endorsed on cover: File No. 35,992. S. Illinois D. C. U. S. Term No. 178. William J. Stratton, as Secretary of State of the State of Illinois, appellant, vs. St. Louis Southwestern Railway Company. Filed June 23, 1931. File No. 35,992.